IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

Crl.MC.No. 3219 of 2007()

CC.333/2004 of CHIEF JUDICIAL MAGISTRATE COURT, PALAKKAD
SC.88/2001 of ASSISTANT SESSIONS COURT, PALAKKAD

.....

PETITIONER: COMPLAINANT:

KRISHNAN, S/O. RAMAN, AGED 47 YEARS,
MUTHUKATTIL HOUSE, KINASSERY AMSOM,
PALAKKAD TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENTS: ACCUSED:

----

1. **STATE OF KERALA, REPRESENTED BY**
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM, REPRESENTING S.I. OF POLICE,
   PALAKKAD TOWN SOUTH POLICE STATION.

2. **MARUTHAN, S/O. SANKARAN, AGED 55 YEARS,**
   MUTHUKAD, KINASSERY AMSOM, PALAKKAD.

3. **SHANMUGHAN, S/O. CHATHAN, AGED 47 YEARS,**
   PARAPPANA, KINASSERY AMSOM, PALAKKAD.

4. **NARAYANAN, S/O. KUNHANDI, AGED 47 YRS,**
   CHOTTUPADAM, KINASSERY AMSOM, PALAKKAD.

5. **MOHANDAS, S/O. MARIMAN, AGED 42 YEARS,**
   KINASSERY AMSOM, PALAKKAD.

BY PUBLIC PROSECUTOR SRI. M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

R.BASANT, J

= = = = = = = = = = = = = =

Crl.M.C. No.3219 Of 2007

= = = = = = = = = = = = = =

Dated this the 18th day of October, 2007

ORDER

Petitioner is the de facto complainant in a case in which cognizance has been taken by the learned Magistrate on a final report submitted by the Police. In that crime initially the offence punishable under Section 307 was also alleged. Consequently it was committed to the Court of Sessions. Court of Sessions had numbered the case as S.C.No.88/2001. After hearing on the question of charge, the matter has been sent back to the learned Chief Judicial Magistrate for disposal under Section 228 Cr.P.C. The same is pending before the learned Cheif Judicial Magistrate as C.C.No.333/2004. The petitioner was not satisfied with the final report submitted by the Police. He had hence filed a private complaint. Cognizance was taken on the private complaint also and the said case is now pending as C.C.No.331/2004 before the learned Chief Judicial Magistrate. Thus both cases are now pending before the learned Chief Judicial Magistrate – Palakkad.

2. The petitioner has come to this Court seeking directions regarding the manner in which these two cases are to be disposed of. Law appears to be well settled. The parities of law is declared without any room of doubt in the decision in **Mani vs. Swaminathan** and

other cases, (1986 KLT 170)**.** When a private complaint and a police charge case are both pending regarding the same incident/ crime, the court has to consider whether consolidation of the cases is possible. If not, separate trials will have to be conducted and the cases will have finally to be disposed of simultaneously one after the other in immediate succession. There can be no question or dispute on the procedure which is to be followed correctly by the Court.

3. Why then has the petitioner come to this Court, instead of making appropriate application before the learned Magistrate to take up both cases for trial simultaneously? The learned counsel for the petitioner submits that the learned Magistrate had made certain observations in the Court which induced in the petition an apprehension that the correct procedure might not be followed. It is for the petitioner to file proper application before the learned Magistrate to follow the procedure in accordance with law and if there be, any order adverse to him, he can certainly seek to challenge such decision in accordance with law.

4. This Crl.M.C. is accordingly dismissed with the above observations. If the petitioner files appropriate application, appropriate orders must be passed by the learned Magistrate on such application for trial and disposal of the two cases simultaneously .

(R.BASANT, JUDGE)

sj